

1 RONALD J. TENPAS
2 Assistant Attorney General
3 Environment and Natural Resources Division
4 United States Department of Justice
5 BRADLEY R. O'BRIEN
6 Environmental Enforcement Section
7 Environment & Natural Resources Division
8 301 Howard Street, Suite 1050
9 San Francisco, California 94105
10 Telephone: (415) 744-6484
11 Facsimile: (415) 744-6476
12 E-mail: brad.obrien@usdoj.gov

13 LEONARDO M. RAPADAS
14 United States Attorney
15 MIKEL W. SCHWAB
16 Assistant United States Attorney
17 Suite 500, Sirena Plaza
18 108 Hernan Cortez
19 Hagatna, Guam 96910
20 Telephone: (671) 472-7332
21 Facsimile: (671) 472-7215

22 Attorneys for the United States of America

23 UNITED STATES DISTRICT COURT
24 COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

25 UNITED STATES OF AMERICA,

26 Plaintiff,

27 v.

28 COMMONWEALTH UTILITIES
CORPORATION and the
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS,

Defendants.

CIVIL CASE NO.

STIPULATED ORDER
NUMBER TWO
FOR PRELIMINARY
INJUNCTIVE RELIEF

TABLE OF CONTENTS

I.	JURISDICTION AND VENUE	-4-
II.	APPLICABILITY	-5-
III.	DEFINITIONS	-8-
IV.	OIL SPILL PREVENTION, PREPAREDNESS AND RESPONSE	-9-
A.	CLEAN WATER ACT - OIL POLLUTION GENERAL WORK	-9-
B.	CUC POWER PLANTS	-22-
C.	CUC POWER PLANTS 1 AND 2	-23-
D.	CUC POWER PLANT 3	-34-
E.	CUC POWER PLANT 4	-36-
F.	CUC ROTA POWER PLANT	-39-
G.	SPCC AND FRP FOR PP FACILITIES	-40-
H.	CUC PIPELINE	-42-
V.	GENERAL PROVISIONS	-48-
A.	REPORTING	-48-
B.	SUBMISSIONS AND DECISIONS REQUIRING EPA APPROVAL	-51-
C.	ACCESS	-53-
D.	NOTICES AND SUBMISSIONS	-55-
E.	STIPULATED PENALTIES	-59-
F.	FORCE MAJEURE	-63-
G.	DISPUTE RESOLUTION	-67-
H.	GENERAL	-71-
I.	INFORMATION RETENTION	-72-
J.	EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS ...	-75-
K.	COSTS	-77-
L.	RETENTION OF JURISDICTION	-77-
M.	MODIFICATION	-78-
N.	TERMINATION	-78-

1 **WHEREAS**, the United States of America filed a civil action seeking
2
3 injunctive relief and the assessment of civil penalties against the Commonwealth
4 Utilities Corporation (“CUC” or “Defendant”) under the Clean Water Act,
5
6 33 U.S.C. §§ 1251 - 1387 (“CWA”) and the Safe Drinking Water Act,
7
8 42 U.S.C. §§ 300f - 300j-26 (“SDWA”);

9 **WHEREAS**, the Parties are entering into this instant Stipulated Order
10 Number Two (“Stipulated Order Number Two”) pursuant to Sections 309 and 311
11 of the CWA, 33 U.S.C. §§ 1319 and 1321, to address oil spill prevention,
12
13 preparedness, and response actions. The Parties are entering into a companion
14
15 Stipulated Order (“Stipulated Order Number One”) to address requirements of the
16
17 CWA and SDWA. Stipulated Order Number Two and Stipulated Order Number
18
19 One will be lodged concurrently and are subject to the public comment process
20
21 and court approval.

22 **WHEREAS**, CUC is a public corporation that has the authority to produce,
23
24 treat, transmit, store, distribute, and sell drinking water in the Commonwealth of
25
26 the Northern Mariana Islands (“CNMI”), as well as the authority to collect, treat,
27
28 and sell or dispose of wastewater in CNMI, and is responsible for the construction,
29
30 maintenance, operation and regulation of all CNMI utility services, including
31
32 power generation and distribution;

1 **WHEREAS**, the Commonwealth of the Northern Mariana Islands is
2
3 included as a defendant in this action in fulfillment of its CWA § 309(e)
4 responsibilities, 33 U.S.C. § 1319(e);

5
6 **WHEREAS**, CUC owns and operates the Power Plant 1 and 2 facilities and
7 the associated oil storage located in Lower Base on the island of Saipan (“PP 1
8 and 2”); CUC owns the Power Plant 3 facility and the associated oil storage
9 located in Isley Field near Saipan International Airport on the island of Saipan
10 (“PP 3”); CUC owns the Power Plant 4 facility and the associated oil storage
11 located on the island of Saipan (“PP 4”); CUC owns and operates the Rota Power
12 Plant facility and associated oil storage located in Songsong Village on the island
13 of Rota (“Rota PP”); and CUC owns an eight (8) inch steel pipeline that transfers
14 oil from the Mobil Marine Terminal gate valve #1 to PP 1 and 2 (“CUC
15 Pipeline”);

16
17 **WHEREAS**, PP 1 and 2, PP 3, PP 4, and Rota PP facilities (herein after
18 collectively referred to as “PP Facilities”) and the CUC Pipeline;

19
20 **WHEREAS**, the PP Facilities are subject to the Spill Prevention, Control
21 and Countermeasures Regulations (“SPCC”) found at CWA Section 311(j),
22 33 U.S.C. § 1321(j), and 40 C.F.R. Part 112;

23
24 **WHEREAS**, PP 1 and 2 are subject to the Facility Response Plan
25
26
27
28

1 Regulations (“FRP”) found at CWA Section 311(j), 33 U.S.C. § 1321(j), and
2
3 40 C.F.R. Part 112.20;

4 **WHEREAS**, the actions that CUC is required to undertake at the PP
5
6 Facilities and the CUC Pipeline pursuant to this Stipulated Order Number Two are
7
8 necessary to mitigate the threat of discharge and address the imminent and
9
10 substantial threat to public health or welfare of the United States. These actions
11
12 are needed to prevent a discharge of oil into or on the waters of the United States,
13
14 or the adjoining shorelines to these waters, or that may affect natural resources
15
16 belonging to, appertaining to, or under the exclusive management authority of the
17
18 United States, as provided for in CWA Section 311(c)(2)(A) and (e), 33 U.S.C. §
19
20 1321(c)(2)(A) and (e);

21 **WHEREAS**, the parties agree that entry of this Stipulated Order Number
22
23 Two for Preliminary Injunctive Relief is the most appropriate way to achieve the
24
25 immediate implementation of short-term projects and initial planning measures by
26
27 CUC to begin to address issues of CUC’s noncompliance with the CWA;
28

29 **THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED as**
30
31 **follows:**

32 **I. JURISDICTION AND VENUE**

33 1. This Court has jurisdiction over the subject matter of this

1 action, pursuant to 28 U.S.C. §§ 1331, 1345, and 1355, and the
2 CWA, and over the parties. Venue lies in this District pursuant
3 to 28 U.S.C. §§ 1391 and 1395(a). For purposes of this
4 Stipulated Order Number Two, or any action to enforce this
5 Stipulated Order Number Two, Defendant consents to the
6 Court's jurisdiction over this Stipulated Order Number Two
7 and any such action and over Defendant and consents to venue
8 in this judicial district.
9

10
11
12 2. For purposes of this Stipulated Order Number Two only,
13 Defendant agrees that the Complaint states claims upon which
14 relief may be granted. This clause shall not serve as an
15 admission or waive any of CUC's defenses in the event that
16 any matter stated in the Complaint is subsequently litigated.
17
18

19
20 3. Notice of the commencement of this action has been given to
21 the CNMI, as required by the CWA.
22

23 **II. APPLICABILITY**

24 4. The obligations of this Stipulated Order Number Two apply to
25 and are binding upon the United States, and upon Defendant
26 and any successors, assigns, or other entities or persons
27
28

1 otherwise bound by law.

- 2
- 3 5. A transfer of ownership or operation of CUC's PP Facilities, or
- 4 the CUC Pipeline, shall relieve Defendant of its obligation to
- 5 ensure that the terms of the Decree are implemented if: 1) EPA
- 6 consents to the transfer; and 2) the transferee agrees to
- 7 undertake the obligations required by this Stipulated Order
- 8 Number Two and be substituted for the Defendant as a party
- 9 under this Stipulated Order Number Two and be thus bound by
- 10 the terms thereof. At least thirty (30) days prior to such
- 11 transfer, Defendant shall provide a copy of this Stipulated
- 12 Order Number Two to the proposed transferee and shall simul-
- 13 taneously provide written notice of the prospective transfer,
- 14 together with a copy of the proposed written agreement, to EPA
- 15 Region 9, the United States Attorney for the District of Guam,
- 16 and the United States Department of Justice, in accordance
- 17 with Section V, Subsection D (Notices and Submissions) of
- 18 this Stipulated Order Number Two. Any attempt to transfer
- 19 ownership or operation of the PP Facilities or the CUC
- 20 Pipeline, without complying with this Paragraph constitutes a
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1 violation of this Stipulated Order Number Two.

2
3 6. Defendant shall provide a copy of this Stipulated Order
4 Number Two to all officers, employees, and agents whose
5 duties might reasonably include compliance with any provision
6 of this Stipulated Order Number Two, as well as to any
7 contractor retained to perform work required under this
8 Stipulated Order Number Two. Defendant shall condition any
9 such contract upon performance of the work in conformity with
10 the terms of this Stipulated Order Number Two.
11

12
13
14 7. In any action to enforce this Stipulated Order Number Two,
15 Defendant shall not raise as a defense the failure by any of its
16 officers, directors, employees, agents, or contractors to take any
17 actions necessary to comply with the provisions of this
18 Stipulated Order Number Two. If there has been a breach of a
19 contract or breach of duty by a contractor which Defendant
20 believes has caused a failure to comply with this Stipulated
21 Order Number Two, Defendant reserves the right to take
22 judicial action against such contractor.
23
24
25
26
27
28

1 **III. DEFINITIONS**

2 Any term used in this Stipulated Order Number Two which is defined in
3 Sections 311(a) or 502 of the CWA, 33 U.S.C. §§ 1321(a) or 1362, shall have the
4 meaning set forth in that section. In addition, the following definitions shall apply
5 to the terms used herein:
6

7
8 “Entry Date” means the date this Stipulated Order Number Two is entered
9 by the Court.
10

11 “Primary Containment” means each tank, drum or other container which is
12 used for the storage of oil and/or oil-contaminated material;
13

14 “Secondary Containment” means the geographic area located beneath and
15 surrounding any tank, drum or other container which is used for the storage of oil,
16 which provides capacity for the largest container located within the area plus
17 adequate freeboard for precipitation. Secondary Containment prevents a spill of
18 oil from emanating beyond this geographic area and must be impervious to spilled
19 oil.
20

21 “Compromised Tank, Drum or Other Container” means any tank, drum or
22 other container which is damaged, bulging, rusted or dented in any way, and/or is
23 missing a secured cover, is leaking oil, or which may leak oil.
24

25 “Security Measures” means those steps which deter and prevent public
26
27
28

1 access to an area, including but not limited to: (1) legible signs informing persons
2 of the presence of hazardous materials; (2) lighting; (3) fencing, gates, and/or
3 other restrictive physical barriers; (4) locks; and (5) guards.
4

5
6 **IV. OIL SPILL PREVENTION, PREPAREDNESS AND RESPONSE**

7 **A. CLEAN WATER ACT - OIL POLLUTION GENERAL WORK**

- 8
9 8. CUC shall follow the terms and perform the work as required
10 in this Section. All work to be performed must be conducted
11 by qualified and certified personnel, in accordance with
12 industry standards, laws, and requirements. As required in
13 Section IV (Wastewater and Drinking Water Systems) of
14 Stipulated Order Number One, CUC shall hire a Technical
15 Manager for Oil, who is responsible for oil and fuels
16 management at the CUC Facilities.
17
18 9. CUC shall perform the work necessary to complete the task(s)
19 in this Section in accordance with the National Contingency
20 Plan ("NCP"), 40 C.F.R. Part 300, and shall comply with the
21 schedules specified in this Stipulated Order Number Two and
22 in the approved workplans submitted pursuant this Section.
23
24 10. Endangerment and Emergency Response. CUC shall continue
25
26
27
28

1 to work to ensure that oil from any of the PP Facilities and the
2 CUC Pipeline does not enter into navigable waters, including
3 Charlie Dock Harbor, Tanapag Lagoon, Lau Lau Bay, West
4 Harbor, the Philippine Sea, and the Pacific Ocean, and all
5 adjoining tributaries and adjoining shorelines. CUC shall
6 continue to take all necessary steps to remove the discharge or
7 threat of discharge of oil into such waters from any of the PP
8 Facilities and the CUC Pipeline, including the removal of
9 uncontained or leaking oil from tanks, pipelines, drums and
10 containers and associated oil contaminated soil and
11 groundwater.
12

- 13
14
15
16
17
18 11. CUC shall continue to secure all sources of oil discharges and
19 take all appropriate measures to prevent further discharge. This
20 shall include providing appropriate Primary Containment and
21 Secondary Containment for each of the tanks, pipelines, drums
22 and/or containers of questionable integrity. This work shall be
23 conducted in accordance with the Spill Prevention, Control and
24 Countermeasures ("SPCC") Regulations 40 C.F.R. Part 112.
25 All oil removal and transfer work that is required by this
26
27
28

1 Stipulated Order Number Two shall be performed by
2 Defendant entirely within Secondary Containment. During any
3 and all oil transfer operations, care must be taken to minimize
4 spills and keep all areas clean and free of oil spills. Oil spill
5 response materials must be on hand during transfer operations
6 and any spills, which occur during transfer must be cleaned up
7 immediately. For each tank, drum or other container which has
8 been drained of oil, Defendant shall remove any oily residue
9 prior to storage, disposal, or use of the empty tank, drum or
10 other container.
11

- 12 12. If any incident, or change in facility conditions during the
13 actions conducted pursuant to this Stipulated Order Number
14 Two causes or may cause a substantial threat of a discharge or
15 additional discharge of oil or hazardous substances or a
16 substantial threat to the public health or welfare of the United
17 States (including but not limited to fish, shellfish, wildlife,
18 other natural resources, and the public and private beaches and
19 shorelines of the United States), from the PP Facilities or CUC
20 Pipeline, CUC shall immediately take all appropriate response
21
22
23
24
25
26
27
28

1 actions. CUC shall take these actions, in accordance with all
2 applicable provisions of this Stipulated Order Number Two,
3 including, but not limited to the Health and Safety Plan, to
4 prevent, abate or minimize such discharge or substantial threat
5 of a discharge to the public health and welfare of the United
6 States. CUC shall also, immediately notify the On-Scene
7 Coordinator (“OSC”) or, in the event of her unavailability,
8 CUC shall notify EPA Region 9 at (800) 300-2193. CUC shall
9 also notify the EPA Project Coordinator and the DEQ Project
10 Coordinator of the incident or facility conditions, as soon as
11 practicable thereafter. CUC shall take its response actions in
12 consultation with the OSC, unless it is not possible for CUC to
13 contact the OSC prior to the time the actions become necessary.
14 Stipulated Order Number Two does not limit EPA, the
15 Department of Homeland Security, Coast Guard’s (“USCG”)
16 authority to respond to the discharge or endangerment and seek
17 recovery of its costs of response work.
18

- 19
20
21
22
23
24
25
26
27 13. In the event of any discharge of oil or hazardous substances,
28 CUC shall immediately notify the National Response Center at

1 (800) 424-8802. CUC shall also submit a written report to the
2 OSC within seven (7) days after each discharge, setting forth
3 the events that occurred and the measures taken or to be taken
4 to mitigate and prevent the recurrence of such a discharge.
5

6 This reporting requirement is in addition to, not in lieu of,
7 reporting under Section 311(b)(5) of CWA and Section 304 of
8 the Emergency Planning and Community Right-To-Know Act
9 of 1986, 42 U.S.C. § 11001 et. seq., if applicable, or under any
10 other state, local or federal laws.
11

- 12
13 14. Nothing in this Stipulated Order Number Two shall be deemed
14 to limit any authority of the United States to take, direct, or
15 order all appropriate action to protect human health and the
16 environment or to prevent, abate, or minimize an actual or
17 threatened release of hazardous substances, pollutants or
18 contaminants, regulated substances or hazardous or solid
19 wastes at or from the PP Facilities or the CUC Pipeline.
20

- 21
22 15. Health & Safety Plan(s). Within sixty (60) days after the Entry
23 Date, CUC shall prepare and submit for EPA review and
24 comment a Health and Safety Plan ("HASP") that ensures the
25
26
27
28

1 protection of the human health and safety during performance
2 of work under this Section at the PP Facilities and CUC
3 Pipeline. The HASP shall be prepared and updated in
4 accordance with the applicable portions of EPA's Standard
5 Operating Safety Guide, (November 1984, updated July 1988,
6 and any additional updates). In addition, the HASP shall
7 comply with all current Occupational Safety and Health
8 Administration ("OSHA") regulations, including but not
9 limited to Hazardous Waste Operations and Emergency
10 Response (29 C.F.R. Part 1910), Construction Standards (29
11 C.F.R. Part 1926), General Industry Standards (29 C.F.R. Part
12 1910), and the general duty requirement of Section 5(a)(1) of
13 the Occupational Safety and Health Act of 1970 (29 U.S.C. §
14 651 et seq.). CUC shall incorporate all changes to the plan
15 requested by EPA and implement the plan during the pendency
16 of this Stipulated Order Number Two. Separate HASPs may be
17 submitted for different phases of work, but there must be a
18 HASP applicable to each piece of work specified by this
19 Section to be performed at the PP Facilities and the CUC
20
21
22
23
24
25
26
27
28

1 Pipeline. An approved Health and Safety Plan must be in
2 effect prior to the commencement of any work under this
3 Stipulated Order Number Two.
4

- 5
6 16. Quality Assurance/Quality Control. With each workplan
7 required by this Section, which includes sampling, CUC shall
8 prepare and submit a Sampling and Analysis Plan (“SAP”) no
9 less than thirty (30) days prior to commencing field sampling
10 activities, or in the case of field activities to be performed in
11 connection with any workplan, at the time of the submission of
12 such workplan to EPA for review and approval. Each SAP
13 shall include Quality Assurance/Quality Control (“QA/QC”)
14 that complies with all of EPA’s quality assurance and quality
15 control requirements, except to the extent that they are
16 modified by the requirements of this Section. To provide
17 quality assurance and maintain quality control, CUC shall also:
18
19 a. Ensure that any laboratory used by CUC for analyses
20 performs those analyses according to a method or
21 methods deemed satisfactory to EPA and submits all
22 protocols to be used for analyses to EPA as part of the
23
24
25
26
27
28

1 sampling and analysis plan described below. If methods
2 other than those in Test Methods for Evaluating Solid
3 Waste, Physical/Chemical Methods ("SW-846") are
4 proposed for use, CUC shall submit all proposed
5 protocols accompanied by an appropriate justification
6 and a demonstration of the effectiveness and
7 applicability of the proposed alternative to EPA for
8 approval at least thirty (30) days prior to the
9 commencement of analysis and shall obtain EPA
10 approval prior to the use of such protocols.

- 11
12
13
14
15 b. Prepare and submit a sampling and analysis plan for
16 collection of data at the PP Facilities and the CUC
17 Pipeline based on the guidance listed above, no less than
18 thirty (30) days prior to commencing field sampling
19 activities, or, in the case of field activities to be
20 performed in connection with any workplan, at the time
21 of the submission of such workplan to EPA for review
22 and approval.
23
24
25
26 c. Notify EPA and DEQ in writing, including e-mail, at
27
28

1 least seven (7) days before engaging in any PP Facilities
2 and/or CUC Pipeline related field activities pursuant to
3 this Section.
4

5 d. At the request of EPA or DEQ, CUC shall provide or
6 allow EPA, DEQ and their authorized representatives, to
7 draw, split, or duplicate samples of all samples collected
8 by CUC with regard to the PP Facilities or the CUC
9 Pipeline or pursuant to this Section. Nothing in this
10 Stipulated Order Number Two shall limit or otherwise
11 affect EPA's authority to draw samples pursuant to
12 applicable law.
13

14 e. CUC shall submit to EPA and DEQ the results of all
15 sampling and/or tests and other data generated by, or on
16 behalf of, CUC, in accordance with the requirements of
17 this Stipulated Order Number Two and any workplans
18 approved under this Section.
19

20 17. Shipment of Oil or Hazardous Substances. CUC shall, prior to
21 any shipment or transport of used oil or hazardous substances,
22 oil or hazardous substances-contaminated soil, or oil or
23
24
25
26
27
28

1 hazardous substances-contaminated water from the PP
2 Facilities or the CUC Pipeline, provide written notification of
3 such shipment to EPA and DEQ. The notification shall
4 include:
5

- 6 a. The name and location of the facility receiving or interim
7 facilities to which the oil or hazardous substances will be
8 shipped;
9
10 b. The type and quantity of the oil or hazardous substances
11 to be shipped;
12
13 c. The expected schedule for the shipment of the oil or
14 hazardous substances; and
15
16 d. The transporter and method of transportation of the
17 shipment of oil or hazardous substances.
18
19

20 18. CUC shall also notify EPA and DEQ of any significant changes
21 in the shipment plan, such as a decision to ship the oil or
22 hazardous substances to another facility or by another means of
23 transport.
24

25
26 19. All shipments of used oil or hazardous substances, oil or
27 hazardous substances-contaminated soil, and oil or hazardous
28

1 substances-contaminated water from the PP Facilities and the
2 CUC Pipeline shall be transported, stored, and disposed of in
3 accordance with all U.S. Department of Transportation
4 (“DOT”) regulations, with the NCP, and with all other federal,
5 state, and local laws and regulations.
6

7
8
9 20. Contracting. For all contracted work conducted in accordance
10 with this Section, CUC shall allow EPA review and comment
11 on contractors and RFPs, to ensure that contractors and
12 contracted work to be performed meets the specifications
13 required by EPA.
14
15

16 a. Defendant’s Contractors. Within ninety (90) working
17 days after the Entry Date, CUC shall notify EPA in
18 writing of the identity and qualifications of the
19 contractor, subcontractor, supervisory personnel, and
20 other persons who are or will be primarily responsible
21 for developing the work required by this Section of this
22 Stipulated Order Number Two. CUC shall further notify
23 EPA in writing of the identity and qualifications of all
24 other contractors, subcontractors, supervisory personnel
25
26
27
28

1 and other persons selected by CUC who will conduct all
2 or any portion of the work no less than ten (10) working
3 days prior to commencement of the work to be
4 performed by such persons. CUC shall ensure that all
5 contractors, subcontractors, supervisory personnel and/or
6 other persons retained to perform response actions shall
7 meet the OSHA requirements as defined in 29 C.F.R. §
8 1910.120. Tank and pipeline inspectors are to be
9 certified to perform tank and pipeline inspections,
10 respectively. CUC's selection of all contractors,
11 subcontractors, supervisory personnel and other persons
12 who will perform work, including the CUC Technical
13 Manager for Oil, and any replacements to any such
14 persons, shall be subject to disapproval by EPA at any
15 time. In the event of any such disapproval by EPA, CUC
16 shall notify EPA within ten (10) working days of receipt
17 of such EPA disapproval of the person(s) who will
18 replace the one(s) disapproved by EPA. If a person's
19 selection is disapproved by EPA, that person shall not
20
21
22
23
24
25
26
27
28

1 perform such specified work.

- 2
- 3 b. Requests for Proposals. If CUC selects to contract out
- 4 the work to be performed under this Section, fifteen (15)
- 5 days prior to publication CUC shall develop and submit
- 6 for EPA review, a draft scope of work and a draft RFP
- 7 for the work to be performed. EPA shall be allowed ten
- 8 (10) days to review and/or provide comments to CUC
- 9 regarding the RFP and CUC will make appropriate
- 10 changes to the RFP prior to publication of the RFP.
- 11
- 12
- 13
- 14

- 15 21. Schedule of Work. Within ninety (90) days after the Entry
- 16 Date, CUC shall submit a comprehensive schedule for the work
- 17 to be performed under this Section. CUC's proposed schedule
- 18 to conduct each of the tasks outlined in this Section, should
- 19 adequately reflect CUC's ability to conduct this work. This
- 20 should also be reflected in each of the project schedules
- 21 submitted with the tasks required below. Requests for
- 22 amendments to the schedule set forth in this Section may be
- 23 submitted with the comprehensive schedule.
- 24
- 25
- 26
- 27
- 28

1 B. CUC POWER PLANTS

2
3 22. Oil Storage Areas. Defendant shall implement inspection
4 procedures, provide proper Primary Containment and
5 Secondary Containment for oil, and implement spill prevention
6 measures to ensure that oil stored on the facility does not
7 present a threat of release.
8
9

10 a. Inspections. Defendant shall continue to implement the
11 existing Oil Storage Facilities Inspection Plan (“OSFI”)
12 at its Power Plant Facilities. The OSFI includes the
13 conduct of inspection for all oil storage areas and
14 methods for promptly cleaning up oil accumulations and
15 oil spills. Inspections must occur weekly, be
16 documented and documentation provided in quarterly
17 progress report.
18
19

20 b. Drum Storage. Defendant shall continue to ensure that
21 oil from each Compromised Tank, Drum or Other
22 Container be transferred into a secured, covered, and
23 non-leaking tank, drum or other container within forty-
24 eight (48) hours of the time that Defendant first becomes
25
26
27
28

1 aware that there is a Compromised Tank, Drum or Other
2 Container. The new the oil-filled drum or other
3 container shall be placed into Secondary Containment.
4

- 5 c. Secondary Containment. Within one hundred eighty
6 (180) days after the Entry Date of this Stipulated Order
7 Number Two, for each drum or other container used for
8 the storage of oil which is located outside of Secondary
9 Containment, Defendant shall place these drums and
10 other containers into Secondary Containment.
11
12 Thereafter, Defendant shall not place, or allow any other
13 person to place, drums or other containers used for the
14 storage of oil into any location which is outside of
15 Secondary Containment.
16
17
18
19

20 C. CUC POWER PLANTS 1 AND 2
21

- 22 23. Power Plants 1 and 2 Workplan. Within ninety (90) days after
23 the Entry Date, CUC shall propose necessary corrective action
24 measures in the form of a workplan ("PP 1 and 2 Workplan")
25 including items discussed in this Section, Subsection A (Clean
26 Water Act - Oil Pollution General Work) Paragraphs 8-21 of
27
28

1 this Stipulated Order Number Two to ensure that there is no
2 longer a discharge or threat of discharge of oil to the
3 environment from Power Plants 1 and 2. The PP 1 and 2
4 Workplan shall provide a concise description of the activities
5 to be conducted to comply with the requirements of this
6 Paragraph, including those addressed below. Measures shall
7 include, but not be limited to:
8
9
10
11 a. Halting of discharges of oil into the environment and
12 preventing reoccurrence of discharges;
13
14 b. Providing appropriate Primary Containment and
15 Secondary Containment for all tanks, pipelines, drums
16 and/or containers of oil, including new oil, used oil, and
17 oil contaminated materials;
18
19 c. Development and implementation of a prioritization
20 system for used disposal and a used oil reduction
21 program, in the form of a Used Oil Management Plan
22 (“UOM”). The UOM Plan shall include storage,
23 sampling, transfer and disposal protocol for drums which
24 are accumulated at PP 1 and 2, as well as those which are
25
26
27
28

1 transferred from other facilities owned or operated by
2 Defendant. The UOM Plan shall include a prioritization
3 system for disposal and ensure that drums have integrity
4 and are stored within Secondary Containment while
5 awaiting disposal and be in accordance with 40 C.F.R.
6 279, and CNMI Used Oil Regulations;
7

8
9
10 d. A comprehensive facility investigation, including all
11 areas where oil spills have occurred, to determine
12 source(s), nature and extent, concentrations and
13 pathways of oil contamination. Investigation must
14 include sampling of soil, groundwater, and surface water
15 media;
16
17

18
19 e. Assessment of the former and existing oil water
20 separator systems and leach fields to determine
21 effectiveness and impact of these systems for continued
22 operations and impact to ground and surface water;
23
24

25 f. Cleanup, removal, treatment, and/or proper disposal of
26 all petroleum or petroleum contaminated media
27 encountered during implementation of the PP 1 and 2
28

1 Workplan. This includes, but is not limited to: used oil,
2 contaminated soil, oil in containment areas, and oil-
3 contaminated groundwater;
4

5 g. A sampling plan for used oil, soils, groundwater and
6 surface water that must include at a minimum: extent of
7 contamination and verification of cleanup; sampling for
8 disposal; sampling strategy and methodology; number of
9 samples to be collected; and analysis to be conducted;
10

11 h. QA/QC, data validation, and chain of custody
12 procedures, regarding all sampling and analyses
13 performed pursuant to the PP 1 and 2 Workplan;
14

15 i. Appropriate post-removal controls and implementation
16 of Security Measures; and
17

18 j. Schedules for implementing and completing all tasks in
19 the PP 1 and 2 Workplan.
20

21 CUC shall perform such actions as approved by EPA in accordance with the
22 process for approval stated in Section V, Subsection B (Submissions and
23 Decisions Requiring EPA Approval) of this Stipulated Order Number Two.
24

25 24. PP1 and 2 Final Report. Within sixty (60) days after the
26
27
28

1 completion of work required under this Section, Subsection C
2 (CUC Power Plants 1 and 2), the PP 1 and 2 Workplan, CUC
3 shall submit for EPA review and approval a final report
4 summarizing these actions. The final report shall conform, at a
5 minimum, with the requirements stated in 40 C.F.R. § 300.165
6 (“OSC Reports”). The final report shall include total costs
7 incurred in complying with the work in this Section,
8 Subsection C (CUC Power Plants 1 and 2) Paragraphs 22 and
9 23, a listing of quantities and types of materials removed off-
10 site or handled on-site, a discussion of removal and disposal
11 options considered for those materials, a listing of the ultimate
12 destinations of those materials, a presentation of the analytical
13 results of all sampling and analyses performed, and
14 accompanying appendices containing all relevant
15 documentation generated during this work (e.g., manifests,
16 invoices, bills, contracts, and permits).

25. Tank System Integrity Testing. If not already provided to EPA,
26 within ninety (90) days after the Entry Date, CUC shall submit
27 an inventory of its aboveground storage tanks at PP 1 and 2,
28

1 and a schedule for their clean out and integrity testing. CUC
2 may propose a prioritization system for the tanks to be integrity
3 tested, which allows for the clean out and testing of one (1)
4 tank at a time. This inventory shall include the capacity of each
5 tank, its dates of construction and/or modification and dates
6 and types of any integrity testing performed on the tank. Based
7 on the information contained in this inventory and industry
8 standards, CUC shall propose aboveground storage tanks to be
9 integrity tested. At a minimum, Tank 104, any other
10 aboveground storage tanks which have not been integrity tested
11 within the last ten (10) years will be proposed for integrity
12 testing. EPA will provide approval or recommend modification
13 of the proposed list of tanks to be integrity tested.
14
15
16
17
18
19

- 20 26. Tank Bottom Sludge and Cleaning Workplan and
21 Implementation. Within two hundred ten (210) days after the
22 Entry Date, CUC shall submit, and following EPA approval,
23 implement a workplan for tank bottom sludge removal,
24 management and disposal and tank cleaning ("Tank Cleanout
25 Plan") for tanks that require integrity testing as specified in this
26
27
28

1 Section, Subsection C (CUC Power Plants 1 and 2). The Tank
2 Cleanout Plan shall describe the process for each tank and
3 associated equipment to be cleaned, to determine the nature and
4 volume of tank bottom sludge and the proper disposal of tank
5 bottom sludge. It shall also include details regarding the
6 characterization, removal, storage, management, transportation,
7 treatment, and/or disposal of all used oil and tank bottom
8 sludge in a manner designed to avoid spills and comply with all
9 laws and regulations.

- 10
11
12
13
14
15 27. Tank Cleanout Report. Within forty-five (45) days after
16 completion of all work required by the approved Tank
17 Cleanout Plan, CUC shall submit to EPA a Tank Cleanout
18 Report. Separate reports must be presented for each tank.
19 Each Tank Cleanout Report shall document the nature,
20 quantity, disposition, transportation, treatment, and/or disposal
21 information regarding the used oil and tank bottom sludge that
22 is recovered from each tank and associated equipment. It shall
23 also include any problems encountered, the methods used to
24 address such problems during the implementation of the Tank
25
26
27
28

Cleanout Plan, and any recommendations for preventative maintenance and operational changes.

28. Tank System Integrity Testing Workplan and Implementation.

Within ninety (90) days after completion of the Tank Cleanout Plan required by Paragraph 26, CUC shall submit, and following EPA approval, implement a comprehensive structural integrity testing/inspection workplan ("Tank Systems Integrity Testing Workplan") for aboveground storage tanks to be integrity tested as specified in Paragraph 25. The Tank System Integrity Testing Workplan must address each tank to be tested and its associated piping, valves, and pumps, and is to be developed in accordance with industry inspection standards including the American Petroleum Institute ("API") standards. The evaluation shall consider deterioration and corrosion of the tanks including, but not limited to, the entire tank bottom, shell to bottom welds, tank roof systems and tank foundations.

29. Tank System Testing Report. Within forty-five (45) days after completion of all inspections needed to assess the integrity of each of the tanks and associate piping and equipment, as

1 provided in the approved Tank System Integrity Testing
2 Workplan, CUC shall submit to EPA a Tank System Integrity
3 Testing Report. Separate reports must be presented for each
4 tank, which documents the findings, and provides supporting
5 engineering analysis and recommendations for repair,
6 alteration, reconstruction and/or foundation modifications, if
7 any. Each Tank System Integrity Testing Report and
8 associated recommendations should be based on the
9 inspection/integrity testing conducted in accordance with the
10 Tank System Testing Workplan, previous inspections and
11 historical information, and shall include all work necessary to
12 maintain or restore the tank and associated equipment to a
13 condition suitable for safe operation in accordance with API
14 and other standards and requirements.

- 15
16
17
18
19
20
21 30. Tank System Repair and Alteration. Within sixty (60) days of
22 EPA approval of the Tank System Testing Report, CUC shall
23 prepare and, following EPA approval, implement a tank system
24 repair, alteration and upgrade plan ("Tank System Repair
25 Workplan") for each tank that has been assessed. The Tank
26
27
28

1 System Repair Workplan must address proposed repairs,
2 alterations and upgrades to the Tank System associated with
3 that tank. The Tank System Repair Plan shall describe the tank
4 system modifications that shall be implemented, including the
5 recommendations listed in the Tank System Testing Report,
6 along with the testing methods to ensure that the
7 repaired/upgraded tank system is fit for service. It shall also
8 provide a proposed schedule for implementation of all items
9 addressed in the Tank System Repair Workplan. All repairs,
10 alterations and modifications must be in accordance with
11 industry standards, including API 653.

- 12
13
14
15
16
17
18 31. Tank System Repair Report. Within forty-five (45) days after
19 completion of the fieldwork necessary to implement each Tank
20 System Repair Workplan, CUC shall prepare a Tank System
21 Repair Report. The Tank System Repair Report shall describe
22 the repairs, alterations and upgrades that were conducted,
23 including a section describing any problems encountered, and
24 the methods used to address such problems during the
25 implementation of the Tank System Repair Workplan. The
26
27
28

1 Tank System Repair Report must include all documentation on
2 post-repair testing and certification of each tank for service.
3

4 32. Corrosion Protection for Power Plants 1 and 2. Within two
5 hundred forty (240) days after the Entry Date, CUC shall
6 submit and upon EPA approval, implement a corrosion and
7 cathodic protection assessment workplan ("CP Assessment
8 Workplan") for aboveground tanks and pipelines located at PP
9 1 and 2. The CP Assessment Workplan shall provide for a
10 thorough assessment of the facility oil containing equipment,
11 provide a strategy for identification of corrosion issues and
12 assess the viability and need for cathodic protection or other
13 measures to prevent and/or minimize corrosion to tanks,
14 pipelines and other oil containing equipment. The CP
15 Assessment Workplan shall be conducted in accordance with
16 industry standards, including API and the National Association
17 of Corrosion Engineers ("NACE").
18
19

20 33. CP Assessment Report. Within forty-five (45) days after
21 completion of the CP Assessment Workplan, CUC shall submit
22 to EPA a CP Assessment Report which documents the findings
23
24
25
26
27
28

1 and provides supporting documentation and recommendations
2 for corrosion protection and minimization. Upon review of this
3 report, EPA may require additional work to be conducted.
4

5 D. CUC POWER PLANT 3
6

7 34. Power Plant 3 Information Request. Within ninety (90) days
8 after the Entry Date, CUC shall submit an oil inventory and
9 SPCC self inspection for the PP 3 facility. The inventory shall
10 include quantities, types, and location of oil storage, types, and
11 condition of containers, and duration of time that the containers
12 have been on the facility. The SPCC self inspection shall
13 include descriptions of facility drainage, Secondary
14 Containment and other applicable spill prevention measures.
15

16 35. Power Plant 3 Workplan. Within ninety (90) days after the
17 Entry Date, CUC shall submit and upon EPA approval,
18 implement a workplan ("PP 3 Workplan") for addressing oil
19 storage at the PP 3 facility. The PP 3 Workplan shall provide a
20 concise description of the activities to be conducted to comply
21 with the requirements of this Paragraph, including those
22 addressed below:
23
24
25
26
27
28

- a. Sampling and handling of all used oil at PP 3;
- b. Providing proper Primary Containment and Secondary Containment and Security Measures for oil storage at PP3;
- c. Plans for transportation, treatment, and/or disposal of the used oil;
- d. A facility investigation to determine the nature and extent of any oil spills on and around PP 3;
- e. Cleanup, removal, treatment, and/or proper disposal of all petroleum or petroleum contaminated media encountered during implementation of the PP 3 Workplan; and
- f. Schedules for implementing and completing all tasks in the PP 3 Workplan.

CUC shall perform such actions as approved by EPA in accordance with the process for approval stated in Section V, Subsection B (Submissions and Decisions Requiring EPA Approval) of this Stipulated Order Number Two.

36. PP 3 Final Report. Within sixty (60) days after the completion of work required under this Section, Subsection D (CUC Power

1 Plant 3), the PP 3 Workplan, CUC shall submit for EPA review
2 and approval a final report summarizing these actions. The
3 final report shall conform, at a minimum, with the requirements
4 stated in the OSC Reports. The final report shall include total
5 costs incurred in complying with the work in this Section,
6 Subsection D (CUC Power Plant 3), a listing of quantities and
7 types of materials removed off-site or handled on-site; a
8 discussion of removal and disposal options considered for
9 those materials; a listing of the ultimate destinations of those
10 materials; a presentation of the analytical results of all
11 sampling and analyses performed; and accompanying
12 appendices containing all relevant documentation generated
13 during this work (e.g., manifests, invoices, bills, contracts, and
14 permits).

15
16
17
18
19
20
21
22 E. CUC POWER PLANT 4

- 23
24 37. Power Plant 4 Information Request. Within ninety (90) days
25 after the Entry Date, CUC shall submit an oil inventory and
26 SPCC self inspection of the PP 4 facility. The inventory shall
27 include quantities, types, and location of oil storage, types, and
28

1 condition of containers, and duration of time that the containers
2 have been on the facility. The SPCC self inspection shall
3 include descriptions of facility drainage, Secondary
4 Containment and other applicable spill prevention measures.
5

6
7 38. Power Plant 4 Workplan. Within one hundred twenty (120)
8 days after the Entry Date, CUC shall submit and upon EPA
9 approval, implement a workplan ("PP 4 Workplan") for
10 addressing oil storage at the PP 4 facility. The PP 4 Workplan
11 shall provide a concise description of the activities to be
12 conducted to comply with the requirements of this Paragraph,
13 including those addressed below:
14

- 15
16
17 a. Sampling and handling of all used oil at PP 4;
18
19 b. Providing proper Primary Containment and Secondary
20 Containment and Security Measures for oil storage at
21 PP4;
22
23 c. Plans for transportation, treatment, and/or disposal of the
24 used oil;
25
26 d. A facility investigation to determine the nature and
27 extent of any oil spills on PP 4;
28

1 e. Cleanup, removal, treatment, and/or proper disposal of
2 all petroleum or petroleum contaminated media
3 encountered during implementation of this PP 4
4 Workplan; and
5

6 f. Schedules for implementing and completing all tasks in
7 the PP 4 Workplan.
8
9

10 CUC shall perform such actions as approved by EPA in accordance with the
11 process for approval stated in Section V, Subsection B (Submissions and
12 Decisions Requiring EPA Approval) of this Stipulated Order Number Two.
13

14
15 39. PP 4 Final Report. Within ninety (90) days after the
16 completion of work required under this Section, Subsection E
17 (CUC Power Plant 4), the PP 4 Workplan, CUC shall submit
18 for EPA review and approval a final report summarizing these
19 actions. The final report shall conform, at a minimum, with the
20 requirements stated in the OSC Reports. The final report shall
21 include total costs incurred in complying with the work in this
22 Section, Subsection E (CUC Power Plant 4), a listing of
23 quantities and types of materials removed off-site or handled
24 on-site; a discussion of removal and disposal options
25
26
27
28

1 considered for those materials; a listing of the ultimate
2 destinations of those materials; a presentation of the analytical
3 results of all sampling and analyses performed; and
4 accompanying appendices containing all relevant
5 documentation generated during this work (e.g., manifests,
6 invoices, bills, contracts, and permits).
7
8
9

10 F. CUC ROTA POWER PLANT

- 11 40. Rota Power Plant Information Request. Within ninety (90)
12 days after the Entry Date, CUC shall submit an oil inventory
13 and SPCC self inspection of the Rota PP facility. The
14 inventory shall include quantities, types, and location of oil
15 storage, types, and condition of containers, and duration of
16 time that the containers have been on the Rota PP facility. The
17 SPCC self inspection shall include descriptions of facility
18 drainage, Secondary Containment and other applicable spill
19 prevention measures. The inspection shall also include an
20 update on the facility's undiked area drainage that was found to
21 be deficient during EPA's October 2005 inspection.
22
23
24
25
26
27
28 41. Rota Power Plant Integrity Inspection Program. Within one

1 hundred fifty (150) days after the Entry Date, CUC shall submit
2 and upon EPA approval, implement an aboveground tank
3 integrity inspection program (“Rota PP Integrity Inspection
4 Program”) for all oil tanks at the Rota PP facility. The Rota PP
5 Integrity Inspection Program shall be based on the age, type,
6 and service of the oil tanks and other relevant information, such
7 as previous repairs and alterations. The Rota PP Integrity
8 Inspection Program shall include descriptions of the type(s) of
9 integrity testing to be performed and a schedule for
10 implementing the program.
11
12
13
14
15

16 G. SPCC AND FRP FOR PP FACILITIES

- 17
18 42. Spill Prevention, Control, and Countermeasures Plans for PP
19 Facilities. Within sixty (60) days after the completion of work
20 at each PP Facility (i.e., Section IV B for PP 1 and 2, Section
21 IV C for PP 3, Section IV D for PP 4, or Section IV E for Rota
22 PP), CUC shall submit to EPA for review a revised SPCC Plan
23 that is in compliance with the provisions of 40 C.F.R. Part 112.
24
25
26 43. Facility Response Plan for Power Plants 1 and 2. Within one
27 hundred twenty (120) days after the Entry Date, CUC shall
28

1 submit an FRP for PP 1 and 2 in compliance with the
2 provisions of 40 C.F.R. Part 112.20 and consistent with the
3 requirements of 33 C.F.R. Part 154. The FRP shall include the
4 appropriate response equipment and contract resources
5 necessary to respond to a worst case discharge and include
6 appropriate scenarios. The submission shall include a proposal
7 for appropriate training of personnel who are not adequately
8 trained to manage and respond to discharges at the site.
9

10
11
12
13 44. FRP Training. Within one hundred fifty (150) days after the
14 Entry Date, CUC shall have conducted oil spill response
15 training and appropriate personnel training to ensure an
16 effective FRP and oil spill response program for PP 1 and 2.
17

18
19 45. Drills and Exercises. Within one (1) year after the Entry Date,
20 CUC shall conduct annual oil spill response drills and exercises
21 in compliance with the approved PP 1 and 2 FRP.
22

23
24 46. FRP for other facilities. Within one hundred eighty (180) days
25 after the Entry Date, CUC shall submit an FRP certification of
26 the applicability of substantial harm for PP 4, Rota PP in
27 accordance with the provisions of 40 C.F.R. 112.20.
28

1 H. CUC PIPELINE

2
3 47. CUC Pipeline Information Request. Within ninety (90) days
4 after the Entry Date, CUC shall submit all construction,
5 maintenance and operation information, and records relating to
6 the eight (8) inch pipeline that runs from gate valve #1 to
7 CUC's PP 1 and 2 ("CUC Pipeline"). Submission must include
8 drawings, schematics, records, and photographic
9 documentation of the CUC Pipeline. Information and records
10 provided should include, but not be limited to: original pipe
11 specifications; flange ratings; type of flange gaskets utilized;
12 number and radius of all bends; any internal/external coating
13 applied; anodes and/or casings installed at below ground
14 sections; original-post-installation hydrotest pressure;
15 operational history (e.g., medium introduced/transported and
16 duration in the pipe if known); past and current
17 evacuation/flushing methods and schedule; maintenance
18 performed and to be performed and associated (e.g., painting
19 the line every three (3) years; weekly pipeline patrol, etc.); all
20 repairs made and post repair hydrotest pressures including the
21
22
23
24
25
26
27
28

1 number of feet tested; and historical statements as to what the
2 pipe looked like on the inside whenever it was taken apart.
3

4 48. CUC Pipeline Incidents. Within ninety (90) days after the
5 Entry Date, CUC shall provide detailed information regarding
6 all incidents, (e.g., releases or threatened releases of oil), that
7 have occurred in the past five years on the CUC Pipeline and
8 all occurrences that CUC staff responded to because of
9 potential incidents (“near misses”). Incidents and near misses
10 may result from factors including, but not limited to: ongoing
11 maintenance issues; environmental changes; construction
12 practices; outside force damage; internal and external
13 corrosion; human errors; and deficiencies in personnel training.
14

15 49. CUC Pipeline Corrosion Control. Within ninety (90) days after
16 the Entry Date, CUC shall assess the adequacy of corrosion
17 control on the CUC Pipeline and submit a report to EPA
18 detailing this assessment and proposed measures to provide
19 adequate corrosion control on the CUC pipeline (“Corrosion
20 Control Report”). The Corrosion Control Report shall address
21 the entire length of the CUC Pipeline, including flanges, pipe
22
23
24
25
26
27
28

1 supports, soil to air interfaces, and below ground pipe sections.
2 Upon EPA approval, CUC shall implement approved corrosion
3 control measures.
4

- 5 50. CUC Pipeline Integrity Testing Workplan. Within ninety (90)
6 days after the Entry Date, CUC shall submit and following
7 EPA approval, implement a workplan for investigation of the
8 integrity of the CUC Pipeline ("Pipeline Integrity Testing
9 Workplan"). This Pipeline Integrity Testing Workplan shall
10 address impacts to the pipeline resulting from internal and
11 external corrosion and outside force damage. At a minimum,
12 CUC will determine the remaining wall thickness of the pipe at
13 sufficient discrete points to understand the carrying capacity of
14 their pipeline and identify weaknesses. The number of discrete
15 points should be based on a statistical analysis to ensure, within
16 a 90 percent confidence interval, that the thinnest wall has been
17 identified. Areas to be specifically checked are all pipe
18 supports, areas of soil to air interface (where the pipeline
19 transitions from above ground to below ground and vice versa),
20 all below ground segments, and other low points or sags. The
21
22
23
24
25
26
27
28

1 Pipeline Integrity Testing Workplan shall include a description
2 of all tools that will be used to inspect any segment of the CUC
3 pipeline and an explanation as to why the tool is the most
4 technically appropriate selection.
5

- 6
7 51. Pipeline Integrity Testing Report. Within forty-five (45) days
8 after completion of the investigations needed to assess the
9 integrity of the CUC Pipeline, as provided in the approved
10 Pipeline Integrity Testing Workplan, CUC shall submit to EPA
11 a Pipeline Integrity Testing Report that documents the findings,
12 and provides supporting engineering analysis and
13 recommendations for repair, alteration, replacement, insertion
14 of another pipeline, installation of a liner and/or modifications
15 of the CUC pipeline. The Pipeline Integrity Testing Report and
16 recommendations should be based on the inspection/integrity
17 testing conducted in accordance with the Pipeline Integrity
18 Testing Workplan, the Corrosion Control Report, previous
19 inspections and historical information, and shall include all
20 work necessary to maintain or restore the pipeline and
21 associated equipment to a condition suitable for safe operation
22
23
24
25
26
27
28

1 in accordance with 49 C.F.R. Part 195, ASME B31-4, API and
2 any other applicable standards and requirements.

- 3
4 52. Pipeline Repair and/or Replacement. Within forty-five (45)
5 days of EPA approval of the Pipeline Integrity Testing Report,
6 CUC shall prepare and, following EPA approval, implement a
7 pipeline repair, alteration, replacement and/or upgrade plan
8 (“Pipeline Repair Workplan”) for the CUC Pipeline. The
9 Pipeline Repair Workplan must address proposed repairs,
10 alterations, replacements and upgrades to the CUC Pipeline
11 system. The Pipeline Repair Workplan shall describe the
12 pipeline modifications that shall be implemented, including the
13 recommendations listed in the Pipeline Integrity Testing
14 Report, along with the testing methods to ensure that the
15 repaired/upgraded pipeline is fit for service. It shall also
16 provide a proposed schedule for implementation of all items
17 addressed in the Pipeline Repair Workplan. All repairs,
18 alterations and modifications must be conducted in accordance
19 with 49 C.F.R. Part 195.422 and applicable industry standards
20 and guidelines.
21
22
23
24
25
26
27
28

- 1 53. Pipeline Repair Report. Within forty-five (45) days after
2 completion of the fieldwork necessary to implement the
3 Pipeline Repair Workplan, CUC shall prepare a Pipeline Repair
4 Report. The Pipeline Repair Report shall describe the repairs,
5 alterations, replacements, and upgrades that were conducted,
6 including a section describing any problems encountered, and
7 the methods used to address such problems during the
8 implementation of the Pipeline Repair Workplan. The Pipeline
9 Repair Report must include all documentation on post-repair
10 testing and certification of the CUC Pipeline for service.
11
12 54. Pipeline Operations and Maintenance Manual. Within sixty
13 (60) days after completion of the fieldwork necessary to
14 implement the Pipeline Repair Workplan, CUC shall prepare a
15 written manual of procedures to establish the minimum
16 requirements for safely operating and maintaining the pipeline
17 to whatever integrity is established as a result of this
18 rehabilitation project. The manual should identify what
19 periodic maintenance needs to be performed, including such
20 items as checking the cathodic protection on the below ground
21
22
23
24
25
26
27
28

1 portions, visually inspecting the above ground portions for
2 evidence of atmospheric corrosion, external coating
3 degradation, correct operation of valves flange leaks, etc. This
4 manual should be consistent with 49 C.F.R. Part 195.402 as
5 well as parts of Subpart L & M, the procedural requirements
6 for a regulated hazardous liquid pipeline.
7
8
9

10 **V. GENERAL PROVISIONS**

11 **A. REPORTING**

12
13 55. Quarterly Progress Reports. CUC shall submit quarterly
14 compliance progress reports to EPA and DEQ. The quarterly
15 compliance progress report shall be due on or before January
16 28, April 28, July 28, and October 28, of each year, and shall
17 cover activities in the preceding calendar quarter. The first
18 quarterly progress report to be submitted will be for the first
19 full calendar quarter after the Entry Date of this Stipulated
20 Order Number Two, and shall include a compliance schedule
21 for all compliance activities and deliverables required by the
22 Stipulated Order Number Two. Quarterly compliance progress
23 reports shall include, but not be limited to, the following:
24
25
26
27
28

- a. CUC's progress toward completing compliance activities and deliverables required by the Stipulated Order Number Two, including any problems encountered;
- b. Submissions of analytical data received during the reporting period;
- c. Quantities of oil and used oil at each of the PP Facilities, as well as oil recycling, treatment, and/or disposal activities performed in the reporting period and anticipated in the next reporting period;
- d. Modifications to approved work, Workplans, and/or schedules during the reporting period;
- e. Reporting of compliance and/or noncompliance with schedules established for specific compliance activities and deliverables;
- f. Explanations of noncompliance and actions taken or to be taken to address noncompliance; and
- g. A brief discussion of the status of efforts toward meeting future compliance schedule activities and deliverables required by the Stipulated Order Number Two.

1 56. Whenever any violation of this Stipulated Order Number Two,
2 or of any applicable permits, or any other event affecting
3 Defendant's performance under this Stipulated Order Number
4 Two, or the performance of its PP Facilities or CUC Pipeline,
5 may pose an immediate threat to the public health or welfare or
6 the environment, Defendant shall notify EPA and DEQ orally
7 or by electronic or facsimile transmission as soon as possible,
8 but no later than 24-hours after Defendant first knew of the
9 violation or event. This procedure is in addition to the
10 requirements set forth in the preceding Paragraph.
11

12 57. Each report submitted by Defendant under this Section shall be
13 signed by an official of the submitting party and include the
14 following certification:
15

16 I certify under penalty of law that this document
17 and all attachments were prepared under my
18 direction or supervision in accordance with a
19 system designed to assure that qualified personnel
20 properly gather and evaluate the information
21 submitted. Based on my inquiry of the person or
22 persons who manage the system, or those persons
23 directly responsible for gathering the information,
24 the information submitted is, to the best of my
25 knowledge and belief, true, accurate, and
26 complete. I am aware that there are significant
27 penalties for submitting false information,
28

1 including the possibility of fine and imprisonment
2 for knowing violations.

3
4 This certification requirement does not apply to emergency or similar notifications
5 where compliance would be impractical.
6

7 58. The reporting requirements of this Stipulated Order Number
8 Two do not relieve Defendant of any reporting obligations
9 required by the CWA or implementing regulations, or by any
10 other federal, state, or local law, regulation, permit, or other
11 requirement.
12

13
14 59. Any information provided pursuant to this Stipulated Order
15 Number Two may be used by the United States in any
16 proceeding to enforce the provisions of this Stipulated Order
17 Number Two and as otherwise permitted by law.
18

19
20 B. SUBMISSIONS AND DECISIONS REQUIRING EPA APPROVAL

21 60. After review of any plan, program, project, report, or other item
22 required to be submitted to EPA for approval to be made under
23 this Stipulated Order Number Two, EPA shall, unless
24 otherwise specified:
25

26 a. Approve the submission in whole or in part; or
27
28

- b. Approve the submission upon specified conditions; or
- c. Disapprove the submission, in whole or in part, directing that the Defendant modify the submission; or
- d. Any combination of a., b., or c. above.

61. Following receipt of EPA's approval or approval upon conditions, pursuant to Paragraphs 60 a., b., c., or d., above, Defendant shall take all approved action in accordance with any conditions imposed by EPA within the approved schedule or time frame established by EPA, or as otherwise set forth in this Stipulated Order Number Two. In the event EPA seeks to impose conditions as set forth in Paragraph 60 b. above, CUC shall have the right to invoke dispute resolution pursuant to Section V Subsection G (Dispute Resolution) of this Stipulated Order Number Two.

62. Following receipt of EPA's notice of disapproval pursuant to Paragraph 60 b. or c. above, Defendant shall have the right, within twenty (20) days or such other period specified by EPA, to "cure" or correct deficiencies in such submission and resubmit the submission for approval. If CUC "cures" or

1 corrects the deficiencies within this twenty day period or other
2 time-frame specified by EPA, stipulated penalties shall not
3 accrue. Notwithstanding the receipt of the notice of
4 disapproval pursuant to Paragraph 60 c. above, Defendant shall
5 proceed, at the direction of EPA, to take any action required by
6 any approved portion of the submission, within the scheduled
7 approved time frame established by EPA, as long as such
8 action is not precluded or rendered impracticable by the non-
9 approved portion.
10
11
12
13

- 14 63. All submissions required to be submitted to EPA under this
15 Stipulated Order Number Two shall, upon approval by EPA, be
16 enforceable under this Stipulated Order Number Two. In the
17 event EPA approves or requires Defendant to modify a portion
18 of a submission required under this Stipulated Order Number
19 Two, the approved or modified portion shall be enforceable
20 under this Stipulated Order Number Two.
21
22
23

24 C. ACCESS
25

- 26 64. Any authorized representative of EPA, USCG, or DEQ, upon
27 presentation of proper identification, shall have a right of entry
28

1 to the PP Facilities and the CUC Pipeline right of way; at any
2 reasonable time for the purpose of monitoring compliance with
3 the provisions of this Stipulated Order Number Two, including,
4 but not limited to, inspecting facilities and equipment,
5 inspecting and copying all records maintained by CUC; testing
6 and observing discharges of oil and threats of such discharges;
7 and collecting split samples obtained by Defendant.
8
9
10

11 a. EPA or DEQ's rights of inspection and entry under this
12 Paragraph are in addition to, and in no way limit, EPA or
13 DEQ's rights of inspection and entry under the CWA,
14 SDWA, the Resource Conservation and Recovery Act or
15 any other law.
16
17

18 b. Where work under this Stipulated Order Number Two is
19 to be performed in areas owned by or in possession of
20 someone other than CUC, CUC shall use its best efforts
21 to obtain all necessary access agreements. Best efforts,
22 as used in this Paragraph, shall include the payment of
23 reasonable compensation in consideration of granting
24 access. CUC shall immediately notify EPA if it is unable
25
26
27
28

1 to obtain such agreements. EPA may assist CUC in
2 gaining access using such means as EPA deems
3 appropriate. EPA reserves the right to seek
4 reimbursement from CUC for all costs and attorneys'
5 fees incurred by the United States in obtaining access on
6 behalf of CUC.
7

8
9
10 D. NOTICES AND SUBMISSIONS

11 65. Whenever, under the terms of this Stipulated Order Number
12 Two, written notice is required to be given or a report or other
13 document is required to be sent by one party to another, it shall
14 be directed to the individuals at the addresses specified below,
15 unless those individuals or their successors give notice of a
16 change to the other parties in writing. All notices and
17 submissions shall be considered effective upon receipt, unless
18 otherwise provided. Notices, submissions, and reports are to
19 be provided both by email and postal mail. Written notice as
20 specified herein shall constitute complete satisfaction of any
21 written notice requirement of the Stipulated Order Number
22 Two with respect to the United States, EPA, and the Defendant,
23
24
25
26
27
28

1 respectively.

2
3 66. EPA has designated Michael Lee, of the Region 9 Pacific
4 Islands Office, as the overall EPA Project Coordinator. The
5 EPA Project Coordinator shall be responsible for coordination
6 between EPA, DEQ, and CUC during the implementation of
7 this Stipulated Order Number Two. All correspondence
8 required by this Stipulated Order Number Two shall be sent to
9 EPA's Project Coordinator.
10

11
12
13 67. DEQ has designated Frank Rabauliman, Director of DEQ, as
14 the DEQ Project Coordinator. The DEQ Project Coordinator
15 shall be responsible for coordination between DEQ and EPA
16 during the implementation of this Stipulated Order Number
17 Two. All correspondence required by this Stipulated Order
18 Number Two shall be sent to DEQ's Project Coordinator.
19

20
21 68. EPA has designated Michelle Rogow, of the Region 9
22 Superfund Division Emergency Response Section, as the On
23 Scene Coordinator ("OSC"). The OSC shall have the
24 authorities, duties and responsibilities vested in the OSC by the
25 NCP, 40 C.F.R. Part 300. The OSC's authority includes, but is
26
27
28

1 not limited to, the authority to halt, modify, conduct or direct
2 any tasks required by this Stipulated Order Number Two. The
3 OSC shall be responsible for the technical oversight of the oil
4 spill prevention, preparedness and response relating to this
5 Stipulated Order Number Two. DEQ has designated Ben
6 Somol as the DEQ Oil Coordinator. All correspondence and
7 files relating to this Stipulated Order Number Two shall be sent
8 to the OSC and the DEQ Oil Coordinator in addition to the
9 overall EPA Project Coordinator listed in Paragraph 66 and the
10 overall DEQ Project Coordinator listed in Paragraph 67.
11

- 12
13
14
15
16 69. Within sixty (60) days after the Entry Date, CUC shall
17 designate a CUC Project Coordinator who shall be responsible
18 for overseeing CUC's implementation of this Stipulated Order
19 Number Two. CUC has the option of designating an Alternate
20 CUC Project Coordinator if it deems it to be appropriate.
21 CUC's notice of designation shall include an address,
22 telephone number, and email address for the CUC Project
23 Coordinator and Alternate CUC Project Coordinator, if one is
24 selected. Information on the proposed coordinator's
25
26
27
28

1 credentials and qualifications should also be provided. Once
2 the Technical Manager for Oil is selected, this person shall
3
4 serve as the CUC Project Coordinator.

5 As to the United States:

6 Chief, Environmental Enforcement Section
7 Environment and Natural Resources Division
8 United States Department of Justice
9 P.O. Box 7611
10 Washington, D.C. 20044-7611
11 Re: DJ # 90-11-3-08277

12 As to EPA:

13 Keith A. Takata
14 Director, Superfund Division
15 United States Environmental Protection
16 Agency
17 Region IX (SFD-1)
18 75 Hawthorne Street
19 San Francisco, California 94105

20 Michael Lee
21 Project Coordinator
22 United States Environmental Protection
23 Agency
24 Region IX (CED-6)
25 75 Hawthorne Street
26 San Francisco, California 94105
27 (415) 972-3769
28 lee.michael@epa.gov

1 Michelle Rogow
2 On Scene Coordinator
3 United States Environmental Protection
4 Agency
5 Region IX (SFD-9-2)
6 75 Hawthorne Street
7 San Francisco, California 94105
8 (415) 972-3082
9 rogow.michelle@epa.gov

10 John McCarroll
11 Manager, Pacific Islands Office
12 United States Environmental Protection
13 Agency
14 Region IX (CED-6)
15 75 Hawthorne Street
16 San Francisco, California 94105
17 (415) 972-3774
18 mccarroll.john@epa.gov

19 As to the Defendant:

20 Bruce Megarr
21 Interim Project Coordinator

22 P.O. Box 501220

23 Saipan, MP 96950
24 (670) 483-4027
25 (670) 235-5138
26 brm5985@gmail.com

27 E. STIPULATED PENALTIES

28 70. Defendant shall pay stipulated penalties for failure to meet any
requirement in this Stipulated Order Number Two as specified
below.

a. For failure to implement, achieve, or complete the

1 requirements set forth in Section IV (Oil Spill
2 Prevention, Preparedness and Response), or in any
3 related submittals required to be modified by EPA and
4 made part of this Stipulated Order Number Two by the
5 dates specified, CUC shall pay:
6

- 7
8 (i) \$1,000 per day per violation for the first thirty (30)
9 days;
10
11 (ii) \$2,000 per day per violation for the following
12 thirty (30) days; and
13
14 (iii) \$5,000 per day per violation for each day
15 thereafter.
16

- 17 b. For failure to implement, achieve, or complete the
18 requirements set forth in Section V, Subsection A
19 (Reporting), or in any related submittals required to be
20 modified by EPA and made part of this Stipulated Order
21 Number Two by the dates specified, CUC shall pay:
22

- 23
24 (i) \$500 per day per violation for the first thirty (30)
25 days;
26
27 (ii) \$1,000 per day per violation for the following
28

thirty (30) days; and

(iii) \$2,000 per day per violation for each day thereafter.

71. For failure to implement, achieve, or complete any other requirements in this Stipulated Order Number Two, CUC shall pay:

a. \$250 per day per violation for the first thirty (30) days;

b. \$500 per day per violation for the following thirty (30) days; and

c. \$1,000 per day per violation for each day thereafter.

72. Stipulated penalties shall begin to accrue on the day after performance is due and shall continue to accrue through the final date of completion even if no notice of the violation is sent to the Defendant. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Stipulated Order Number Two.

73. Any penalty accruing pursuant to this Stipulated Order Number Two shall be payable upon demand and due no later than thirty (30) days after Defendant's receipt of EPA's written demand.

1 Defendant shall pay the amount owed to the United States
2 pursuant to this Stipulated Order Number Two by certified or
3 cashier's check in the amount due payable to the "United States
4 Department of Justice," referencing DOJ No. 90-5-1-1-08471
5 and delivered to the office of the United States Attorney,
6 District of Guam, Attention: Financial Litigation Unit, Suite
7 500, Sirena Plaza, 108 Hernan Cortez, Hagatna, Guam 96910.
8

9
10
11 74. The United States may, in the unreviewable exercise of its
12 discretion, reduce or waive stipulated penalties otherwise due it
13 under this Stipulated Order Number Two.
14

15
16 75. If Defendant fails to pay stipulated penalties owed pursuant to
17 this Stipulated Order Number Two within thirty (30) days of
18 receipt of EPA's written demand, Defendant shall pay interest
19 on the late payment for each day after the initial thirty (30) day
20 due date. The rate of interest shall be the most recent interest
21 rate determined pursuant to 28 U.S.C. § 1961.
22

23
24 76. If the dispute is appealed to the Court and the United States
25 prevails in whole or in part, Defendant shall pay all accrued
26 penalties determined by the Court to be owing, the United
27
28

1 States' enforcement costs, together with interest, within sixty
2 (60) days of receiving the Court's decision or order, except as
3 provided.
4

5 77. If any party appeals the District Court's decision, Defendant
6 shall pay all accrued penalties determined to be owing, together
7 with interest, within fifteen (15) days of receiving the final
8 appellate court decision.
9

10 78. Any payment of stipulated penalties shall include a transmittal
11 letter that states that the payment is for stipulated penalties and
12 shall state for which violation(s) the penalties are being paid.
13

14 79. Stipulated penalties are not the Plaintiff's exclusive remedy for
15 violations of this Stipulated Order Number Two. The United
16 States expressly reserves the right to seek any other relief it
17 deems appropriate, including, but not limited to, action for
18 statutory penalties, contempt, or injunctive relief against
19 Defendant.
20

21 F. FORCE MAJEURE
22

23 80. "Force majeure," for purposes of this Stipulated Order Number
24 Two, is defined as any event arising from causes beyond the
25
26
27
28

1 control of the Defendant, of any entity controlled by Defendant,
2 or of Defendant's contractors, that delays or prevents the
3 performance of any obligation under this Stipulated Order
4 Number Two despite Defendant's best efforts to fulfill the
5 obligation. The requirement that the Defendant exercises "best
6 efforts to fulfill the obligation" includes using best efforts to
7 anticipate any potential force majeure event and best efforts to
8 address the effects of any potential force majeure event (1) as it
9 is occurring and (2) following the potential force majeure
10 event, such that the delay is minimized to the greatest extent
11 possible. "Force Majeure" does not include lack of political
12 consensus or financial inability to complete the deliverables
13 required by this Stipulated Order Number Two.
14
15
16
17
18
19

- 20 81. If any event occurs or has occurred that may delay the
21 performance of any obligation under this Stipulated Order
22 Number Two, whether or not caused by a force majeure event,
23 the Defendant shall orally notify EPA's On Scene Coordinator
24 or, in her absence, EPA's Project Coordinator or, in the event
25 both of EPA's designated representatives are unavailable, the
26
27
28

1 Manager of the Pacific Islands Office, EPA Region 9, within
2 ten (10) days of when Defendant first knew that the event
3 might cause a delay. Within five (5) days thereafter, Defendant
4 shall provide, in writing, to EPA an explanation and
5 description of the reasons for the delay; the anticipated
6 duration of the delay; all actions taken or to be taken to prevent
7 or minimize the delay; a schedule for implementation of any
8 measures to be taken to prevent or mitigate the delay or the
9 effect of the delay; the Defendant's rationale for attributing
10 such delay to a force majeure event if it intends to assert such a
11 claim; and a statement as to whether, in the opinion of the
12 Defendant, such event may cause or contribute to an
13 endangerment to public health, welfare or the environment.
14 The Defendant shall include with any notice all available
15 documentation supporting its claim that the delay was
16 attributable to a force majeure. Failure to comply with the
17 above requirements shall preclude Defendant from asserting
18 any claim of force majeure for that event for the period of time
19 of such failure to comply, and for any additional delay caused
20
21
22
23
24
25
26
27
28

1 by such failure. Defendant shall be deemed to know of any
2 circumstance of which Defendant, any entity controlled by
3 Defendant, or Defendant's contractors knew or should have
4 known.
5

- 6
- 7 82. If EPA agrees that the delay or anticipated delay is attributable
8 to a force majeure event, the time for performance of the
9 obligations under this Stipulated Order Number Two that are
10 affected by the force majeure event may be extended by EPA
11 for such time as is necessary to complete those obligations. An
12 extension of the time for performance of the obligations
13 affected by the force majeure event shall not, of itself, extend
14 the time for performance of any other obligation. If EPA does
15 not agree that the delay or anticipated delay has been or will be
16 caused by a force majeure event, EPA will notify the Defendant
17 in writing of its decision. If EPA agrees that the delay is
18 attributable to a force majeure event, EPA will notify the
19 Defendant in writing of the length of the extension, if any, for
20 performance of the obligations affected by the force majeure
21 event.
22
23
24
25
26
27
28

1 83. If the Defendant elects to invoke the dispute resolution
2 procedures set forth in Section V, Subsection G (Dispute
3 Resolutions), it shall send a written Notice of Dispute no later
4 than fifteen (15) days after receipt of EPA's notice. In any
5 such proceeding, Defendant shall have the burden of
6 demonstrating by a preponderance of the evidence that the
7 delay or anticipated delay has been or will be caused by a force
8 majeure event, that the duration of the delay or the extension
9 sought was or will be warranted under the circumstances, that
10 best efforts were exercised to avoid and mitigate the effects of
11 the delay, and that Defendant complied with the requirements
12 of this Section, Subsection F (Force Majeure).
13
14
15
16
17
18

19 G. DISPUTE RESOLUTION

20 84. Unless otherwise expressly provided for in this Stipulated
21 Order Number Two, the dispute resolution procedures of this
22 Section shall be the exclusive mechanism to resolve disputes
23 arising under or with respect to this Stipulated Order Number
24 Two. Defendant's failure to seek resolution of a dispute under
25 this Section shall preclude Defendant from raising any such
26
27
28

1 issue as a defense to an action by the United States to enforce
2 any obligation of Defendant arising under this Stipulated Order
3 Number Two.
4

5 85. Any dispute that arises under or with respect to this Stipulated
6 Order Number Two shall in the first instance be the subject of
7 informal negotiations between the parties to the dispute. The
8 period for informal negotiations shall not exceed thirty (30)
9 calendar days from the time the dispute arises, unless it is
10 modified by a written agreement of the parties to the dispute.
11 The dispute shall be considered to have arisen when one party
12 sends the other parties a written Notice of Dispute.
13

14 86. In the event that the parties cannot resolve a dispute by
15 informal negotiations under the preceding Paragraph, the
16 position advanced by EPA shall be considered binding unless,
17 within twenty (20) calendar days after the conclusion of the
18 informal negotiation period, Defendant invokes the formal
19 dispute resolution procedures of this Section by serving on the
20 United States a written Statement of Position on the matter in
21 dispute, including, but not limited to, any factual data, analysis
22
23
24
25
26
27
28

1 or opinion supporting that position, and any supporting
2 documentation relied upon by Defendant. Defendant shall set
3 out the nature of the dispute with a proposal for its resolution.
4 The Statement of Position shall specify Defendant's position as
5 to whether the formal dispute resolution should proceed.
6

7
8 87. Within forty-five (45) calendar days after receipt of
9 Defendant's Statement of Position, EPA will serve on
10 Defendant its Statement of Position, including, but not limited
11 to, any factual data, analysis, or opinion supporting that
12 position and all supporting documentation relied upon by EPA.
13 EPA's Statement of Position shall include a statement as to
14 whether the formal dispute resolution should proceed.
15

16
17 88. Formal dispute resolutions are accorded review on the
18 administrative record. An administrative record of the dispute
19 shall be maintained by EPA and shall contain all statements of
20 position, including supporting documentation, submitted
21 pursuant to this Section. Where appropriate, EPA may allow
22 submission of supplemental statements of position by the
23 parties to the dispute.
24
25
26
27
28

1 89. The EPA Region 9 Superfund Division Director, will issue a
2 final administrative decision resolving the dispute based on the
3 administrative record and this decision shall be binding upon
4 Defendant, subject only to the right to seek judicial review as
5 described in this Section.
6

7
8 90. Any administrative decision made by EPA pursuant to this
9 Stipulated Order Number Two shall be reviewable by this
10 Court, provided that a motion for judicial review of the
11 decision is filed by Defendant with the Court, and served on all
12 parties within thirty (30) calendar days of receipt of EPA's
13 decision. The motion shall include a description of the matter
14 in dispute, the efforts made by the parties to resolve it, the
15 relief requested, and the schedule, if any, within which the
16 dispute must be resolved to ensure orderly implementation of
17 this Stipulated Order Number Two. In any such dispute
18 resolution proceeding, Defendant bears the burden of proving
19 that EPA's decision was arbitrary and capricious. The United
20 States may file a response to Defendant's motion.
21
22

23
24
25
26
27 91. The invocation of dispute resolution procedures under this
28

1 Section shall not, by itself, extend, postpone, or affect in any
2 way any obligation of Defendant under this Stipulated Order
3 Number Two, unless and until final resolution of the dispute so
4 provides and the Court grants such an order.
5

- 6
7 92. Stipulated penalties with respect to the disputed matter shall
8 continue to accrue but payment shall be stayed pending
9 resolution of the dispute. Notwithstanding the stay of payment,
10 stipulated penalties shall accrue from the first day of
11 noncompliance with any applicable provision of this Stipulated
12 Order Number Two.
13
14

15 H. GENERAL
16

- 17 93. Where any compliance obligation under this Section requires
18 Defendant to obtain a federal, state, or local permit or approval,
19 Defendant shall submit timely and complete applications and
20 take all other actions necessary to obtain all such permits or
21 approvals. Defendant may seek relief under the provisions of
22 Section V, Subsection F (Force Majeure) of this Stipulated
23 Order Number Two for any delay in the performance of any
24 such obligation resulting from a failure to obtain, or a delay in
25
26
27
28

1 obtaining, any permit or approval required to fulfill such
2 obligation, if Defendant has submitted timely and complete
3 applications and has taken all other actions necessary to obtain
4 all such permits or approvals.
5

- 6
7 94. Each undersigned representative of Defendant and the United
8 States certifies that he or she is fully authorized to enter into
9 the terms and conditions of this Stipulated Order Number Two,
10 to execute the document, and to legally bind, to the document,
11 the party he or she represents.
12
13

14 I. INFORMATION RETENTION
15

- 16 95. Until five (5) years after the termination of this Stipulated
17 Order Number Two, Defendant shall retain, and shall instruct
18 its contractors and agents to preserve, all non-identical copies
19 of all documents, records, or other information (including
20 documents, records, or other information in electronic form) in
21 its or its contractors' or agents' possession or control, or that
22 come into its or its contractors' or agents' possession or
23 control, and that relate in any manner to Defendant's perfor-
24 mance of its obligations under this Stipulated Order Number
25
26
27
28

1 Two. This information-retention requirement shall apply
2 regardless of any contrary corporate or institutional policies or
3 procedures. At any time during this information-retention
4 period, upon request by the United States or DEQ, Defendant
5 shall provide copies of any documents, records, or other
6 information required to be maintained under this Paragraph.
7

- 8
9
10 96. At the conclusion of the information-retention period provided
11 in the preceding Paragraph, Defendant shall notify the United
12 States and DEQ at least ninety (90) days prior to the
13 destruction of any documents, records, or other information
14 subject to the requirements of the preceding Paragraph and,
15 upon request by the United States or DEQ, Defendant shall
16 deliver any such documents, records, or other information to
17 EPA or DEQ. Defendant may assert that certain documents,
18 records, or other information is privileged under the attorney-
19 client privilege or any other privilege recognized by federal
20 law. If Defendant asserts such a privilege, it shall provide the
21 following: (1) the title of the document, record, or information;
22 (2) the date of the document, record, or information; (3) the
23
24
25
26
27
28

1 name and title of each author of the document, record, or
2 information; (4) the name and title of each addressee and
3 recipient; (5) a description of the subject of the document,
4 record, or information, if requested by EPA or DEQ; and (6)
5 the privilege asserted by Defendant. However, no documents
6 or records generated specifically pursuant to the enumerated
7 requirements of this Stipulated Order Number Two shall be
8 withheld on grounds of privilege.
9

10
11
12
13 97. Defendant may also assert that information required to be
14 provided under this Section is protected as Confidential
15 Business Information ("CBI") under 40 C.F.R. Part 2. As to
16 any information that Defendant seeks to protect as CBI,
17 Defendant shall follow the procedures set forth in 40 C.F.R.
18 Part 2.
19

20
21 98. This Stipulated Order Number Two in no way limits or affects
22 any right of entry and inspection, or any right to obtain
23 information, held by the United States or DEQ pursuant to
24 applicable federal or local laws, regulations, or permits, nor
25 does it limit or affect any duty or obligation of Defendant to
26
27
28

1 maintain documents, records, or other information imposed by
2 applicable federal or local laws, regulations, or permits.
3

4 J. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

5
6 99. This Stipulated Order Number Two resolves the civil claims of
7 the United States for the CWA violations (not including the
8 CWA claims resolved by the entry of Stipulated Order Number
9 One) alleged in the Complaint filed in this action through the
10 date of lodging; provided however, this Stipulated Order
11 Number Two does not resolve civil penalty claims for the
12 violations alleged in the Complaint.
13
14

15
16 100. The United States and DEQ reserve all legal and equitable
17 remedies available to enforce the provisions of this Stipulated
18 Order Number Two, except as expressly stated in Paragraph 99.
19 This Stipulated Order Number Two shall not be construed to
20 limit the rights of the United States or DEQ to obtain penalties
21 or injunctive relief under the CWA or implementing
22 regulations, or under other federal, local laws, regulations, or
23 permit conditions, except as expressly specified in Paragraph
24
25
26
27 99.
28

1 101. The United States and DEQ further reserve all legal and
2 equitable remedies to address any imminent and substantial
3 endangerment to the public health or welfare or the
4 environment arising at, or posed by, Defendant's wastewater
5 systems, drinking water systems, PP Facilities, or the CUC
6 Pipeline, whether related to the violations addressed in this
7 Stipulated Order Number Two or otherwise.
8

9
10
11 102. Stipulated Order Number Two is not and shall not be construed
12 as either an NPDES permit or a modification of any existing
13 NPDES permit. By entering into this Stipulated Order Number
14 Two, the United States does not warrant in any manner that
15 Defendant's compliance with the terms of this Stipulated Order
16 Number Two will result in compliance with the provisions of
17 the CWA, and regulations promulgated pursuant to those
18 statutes. Defendant's compliance with the terms of this
19 Stipulated Order Number Two does not affect or resolve the
20 United States' claims for civil penalties or permanent
21 injunctive relief.
22
23

24 103. Stipulated Order Number Two shall not affect CUC's
25
26
27
28

1 obligation to comply with its NPDES permits and with all
2 applicable federal laws, regulations, and permits.
3

4 104. Stipulated Order Number Two does not limit or affect the
5 rights of the United States or Defendant against any third
6 parties, nor does it limit the rights of third parties who are not
7 parties to this Stipulated Order Number Two. In addition, this
8 Stipulated Order Number Two is not to be construed as
9 creating rights or obligations in third parties.
10
11

12
13 K. COSTS

14 105. The parties shall bear their own costs of this action, including
15 attorneys' fees, except that the United States shall be entitled to
16 collect the costs (including attorneys' fees) incurred in any
17 action necessary to collect any portion of the stipulated
18 penalties due but not paid by Defendant.
19
20

21 L. RETENTION OF JURISDICTION
22

23 106. The Court shall retain jurisdiction over this case until
24 termination of this Stipulated Order Number Two, for the
25 purpose of resolving disputes arising under this Stipulated
26 Order Number Two or entering orders modifying this
27
28

1 Stipulated Order Number Two, or effectuating or enforcing
2 compliance with the terms of this Stipulated Order Number
3 Two.
4

5 M. MODIFICATION
6

7 107. There shall be no material modifications of this Stipulated
8 Order Number Two without the written approval of the parties
9 to this Stipulated Order Number Two and the approval of the
10 Court. All non-material modifications, which may include
11 extensions of the time frames and schedules for performance of
12 the terms and conditions of this Stipulated Order Number Two,
13 may be made by written agreement of the parties.
14
15
16

17 N. TERMINATION
18

19 108. Stipulated Order Number Two may be terminated when the
20 United States determines that Defendant has satisfactorily
21 completed performance of its obligations required by this
22 Stipulated Order Number Two, provided that Defendant has
23 fulfilled all other obligations of this Stipulated Order Number
24 Two, including payment of any outstanding stipulated penalties
25 due. The parties shall file with the Court an appropriate
26
27
28

1 stipulation reciting that the requirements of this Stipulated
2
3 Order Number Two have been met.
4

5 IT IS SO ORDERED THIS _____ DAY OF _____ 2008.
6
7

8 _____
9 UNITED STATES DISTRICT COURT
10 JUDGE
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 FOR THE UNITED STATES OF AMERICA:

2
3
4 4 Nov. 2008

5 Date

6 RONALD J. TENPAS
7 Assistant Attorney General
8 Environment and Natural Resources
9 Division
10 United States Department of Justice
11 Washington, D.C. 20530

12
13 7 Nov 2008

14 Date

15 BRADLEY R. O'BRIEN
16 Environmental Enforcement Section
17 Environment and Natural Resources
18 Division
19 United States Department of Justice
20 301 Howard Street, Suite 1050
21 San Francisco, California 94105
22
23
24
25
26
27
28

1 FOR THE ENVIRONMENTAL PROTECTION AGENCY:

2
3
4 23 SEP 2008

5 Date

6 WAYNE NASTRI
7 Regional Administrator
8 Region IX
9 United States Environmental Protection
10 Agency
11 75 Hawthorne Street
12 San Francisco, California 94105

13 Marcela von Vacano
14 Office of Regional Counsel
15 U.S. EPA, Region 9
16 75 Hawthorne, 16th Floor
17 San Francisco, CA 94105
18 Telephone 415-972-3905
19 Facsimile 415-947-3570
20
21
22
23
24
25
26
27
28

FOR EPA HEADQUARTERS:

SEP 08 2008

Date

WALKER SMITH
Director of Office of Civil
Enforcement
United States Environmental
Protection Agency Headquarters
Ariel Rios Building
1200 Pennsylvania Avenue, N. W.
Washington, DC 20460

FOR CUC:

7/28/08
Date

Signature: C
Name (print): ANTONIO S. MUNA

Title: Executive Director

Address: P.O. Box 501220
3rd Flr., Joeten Dandan Commercial Bldg.
Saipan, MP 96950

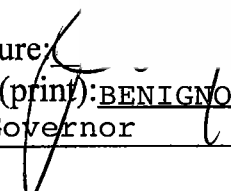
Agent Authorized to Accept Service on Behalf
of Above-signed party:

Name (print): BRUCE MEGARR
Title: Deputy Director of Water & Wastewater
Address: P.O. Box 501220
3rd Flr., Joeten Dandan Commercial Bldg.
Saipan, MP 96950
Ph. Number: (670) 235-6090

FOR CNMI:

JUL 29 2008

Date

Signature: 

Name (print): BENIGNO R. FITIAL

Title: Governor

Address: Caller Box 10007

Saipan, MP 96950

Agent Authorized to Accept Service on Behalf of Above-signed party:

Name (print): MATTHEW T. GREGORY

Title: Attorney General

Address: Office of the Attorney General
Caller Box 10007

Saipan, MP 96950

Ph. Number: (670) 664-2341